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3 **UNITED STATES DISTRICT COURT**
4 **FOR THE NORTHERN DISTRICT OF NEW YORK**

5 JANE DOE, et al.

6 Plaintiffs,

7 vs.

8 HOWARD ZUCKER, et al.

9 Defendants.
10

Civil Action No.: 1:20 – CV – 0840
(BKS/CFH)

**DECLARATION OF SUJATA S. GIBSON IN
SUPPORT OF MOTION FOR PRELIMINARY
INJUNCTION AND TEMPORARY
RESTRAINING ORDER**

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12 Sujata S. Gibson declares under penalty of perjury pursuant to 28 U.S.C. § 1746 the following:

13 1. My name is Sujata S. Gibson. I am over the age of twenty-one and I am fully
14 competent and qualified to make this Declaration. Each and every statement within this Declaration
15 is true and correct and within my personal knowledge.

16 2. I am an attorney licensed to practice in the State of New York, a member of the
17 Gibson Law Firm, PLLC and one of the attorneys of record in the above captioned proceeding.

18 3. I write this declaration in support of the plaintiffs' motion for a temporary
19 restraining order and preliminary injunction.
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21 4. Incorporated by reference into this declaration and filed with this motion are
22 declarations that I personally gathered and confirmed from the following class members (by initial):
23 Declaration of class member A.M.2 dated August 20, 2020; Declaration of class member E.C.
24 dated August 20, 2020; Declaration of class member J.S. dated August 20, 2020; Declaration of
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27 DECLARATION OF COUNSEL IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTIVE RELIEF - 1
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2 class member N.C. dated August 20, 2020; Declaration of class member B.B. dated August 7,
3 2020; Declaration of class member A.M.3 dated August 4, 2020; Declaration of class member
4 K.W. dated August 7, 2020; Declaration of class member C.M. dated August 16, 2020;
5 Declaration of class member N.F. dated August 19, 2020; Declaration of class member C.B.
6 dated August 15, 2020; Declaration of class member A.M. dated August 20, 2020; Declaration of
7 class member R.B. dated August 18, 2020; Declaration of class member M.D. dated August 16,
8 2020; Declaration of class member B.P. dated August 15, 2020; Declaration of class member
9 R.F. dated August 14, 2020; Declaration of class member M.N. dated August 20, 2020;
10 Declaration of class member S.P. dated August 14, 2020; Declaration of class member J.H. dated
11 August 14, 2020; Declaration of class member H.D. dated August 20, 2020;
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14 5. The declarations are by initials to preserve the privacy of the class members. We
15 have filed a separate motion to proceed pseudonymously. I have the full names of each declarant
16 on file.
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18 6. Incorporated by reference into this declaration and filed with this motion are
19 declarations that I personally gathered and confirmed from the following named Plaintiffs:
20 Declaration of Plaintiff Jane Doe, dated August 20, 2020; Declaration of Plaintiff Jane Boe,
21 dated August 7, 2020; Declaration of John Coe, dated August 20, 2020; Declaration of John Foe,
22 dated August 20, 2020; Declaration of Jane Joe, dated August 20, 2020; Declaration of Jane Loe,
23 dated August 21, 2020;
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27 DECLARATION OF COUNSEL IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTIVE RELIEF - 2
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3 7. New York Public Health Law requires students to receive up to 43 immunizations
4 and boosters between birth and the age of eighteen throughout most of the state. Attached hereto is
5 Exhibit 1, a true and correct copy of the New York State Immunization Requirements for School
6 Entrance/Attendance for the 2020-2021 school year. These requirements can also be found at
7 <https://health.ny.gov/publications/2370.pdf>.

8
9 8. Attached hereto is a copy of regulations at issue, first introduced last year. Exhibit
10 2.

11 9. The Plaintiffs ask the Court to take judicial notice of the CDC's acknowledgment that:
12 "Tetanus is not contagious from person to person" available at
13 <https://www.cdc.gov/vaccines/pubs/pinkbook/tetanus.html>.

14 10. Similarly, other mandatory vaccines, including the vaccines mandated for Diphtheria,
15 Pertussis, Polio, and Meningococcal disease, do not provide protection for anyone but
16 the recipient. *See, e.g.*, Vaccine (2018) <https://www.ncbi.nlm.nih.gov/pubmed/29180031>
17 ("neither DTP, nor DTaP or Tdap prevent asymptomatic infection and silent
18 transmission of the pathogen") attached hereto as EXHIBIT 4; American Journal of
19 Diseases of Children (1972) available at <https://www.ncbi.nlm.nih.gov/pubmed/5026197>
20 ("Diphtheria toxoid helps prevent symptomatic disease but does not prevent the carrier
21 state nor stop the spread of infection"); New England Journal of Medicine (2020)
22 available at <https://www.nejm.org/doi/full/10.1056/NEJMoa1900236> ("our results did
23 not show an effect of 4CMenB on carriage of disease-causing meningococci");
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27 DECLARATION OF COUNSEL IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTIVE RELIEF - 3
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<https://www.cdc.gov/cpr/polioviruscontainment/diseaseandvirus.htm> (“IPV does not stop transmission of the virus”).

11. Children vaccinated with vaccines in this category, which do not stop replication and transmission, are potentially more dangerous “to the herd” as they may become asymptomatic carriers. See, e.g., Science Daily (2015) available at <https://www.sciencedaily.com/releases/2015/06/150624071018.htm> (Concluding “that acellular vaccines may well have contributed to -- even exacerbated -- the recent pertussis outbreak by allowing infected individuals without symptoms to unknowingly spread pertussis multiple times in their lifetimes.”)

12. Attached hereto as Exhibit 5 is a true and accurate copy of a letter written by immunologist Tetyana Obukhanych, PhD regarding the public health risks of unvaccinated children on a vaccine by vaccine basis.

13. Of the two million + school aged children that live in New York State, only 4,571 students had a medical exemption last year when the regulations were promulgated (less than a quarter of one percent of all students). Attached hereto as Exhibit 6 is true and accurate copy of an article from the New York State School Board’s Association from September 2019.

14. The Covid-19 pandemic has prompted New York Schools to adopt rigorous protective measures that will further vitiate any possible threat from these medically fragile children. Attached hereto as Exhibit 7 and Exhibit 8 are true and accurate copies of guidance from

1
2 the NYSDOH and the Board of Regents and Governor's office regarding enhanced safety
3 guidelines for New York State schools.
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5 15. Despite these facts, defendants are not willing to allow plaintiffs or class members to
6 attend school, either online or in person with the heightened Covid-19 protections.
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8 16. This motion is brought by Order to Show Cause because school starts in September
9 throughout the state and Plaintiffs need urgent relief to be able to attend and avoid the
10 unconstitutional burdens placed on them last year and the attendant psychological,
11 physical, financial and emotional harm it caused the children and parents.

12 I declare under penalty of perjury that the foregoing is true and correct.

13 Further declarant sayeth not.
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15 DATED: August 25, 2020

s/ *Sujata S. Gibson*

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Sujata S. Gibson, Esq.
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